EFFECT OF COVENANTS IN LEASES UPON TENANT'S RIGHT TO REMOVE TRADE FIXTURES.—At least since the decision in *Poole's Case,* 1 Salk. 368 (1703), it has been considered as settled that a tenant has the right to remove trade fixtures placed upon the demised premises for the purpose of furthering his trade. There is a well-marked tendency in some jurisdictions to greatly extend this right of removal so as to include anything added by the tenant to the leased property "in furtherance of the purpose for which the premises were leased." *Hayward* v. *School District,* 139 Mich. 541, 102 N. W. 999; *Bircher* v. *Parker,* 40 Mo. 118; *Heddrick* v. *Smith,* 103 Ind. 203; *Wittenmeyer* v. *Board of Education,* 10 O. C. C. 119. The right of removal, in the cases where it exists, must of course be exercised within the time settled by the law of the jurisdiction, and the rules in the various states are not entirely harmonious in that regard. For example compare *Kerr* v. *Kingsbury,* 39 Mich. 150, with *Loughran* v. *Ross,* 45 N. Y. 792.

This right of removal may be lost not only by failure to remove within the proper time, but also by the terms of the lease. Leases not infrequently contain provisions that the premises shall be delivered up at the end of the term in good order together with "all future erections and additions," or words to similar effect. In a number of cases such general provisions have been before the courts for consideration, the question usually being whether they covered trade fixtures and other fixtures in their nature generally considered as removable. "In *Naylor* v. *Collinge,* 1 Taunt. 19, the things removed were buildings coming within the very words of the covenant; and yet such of them only as were affixed to the freehold, and not such as rested upon blocks were held to be included." *Holbrook* v. *Chamberlin,* 116 Mass. 155, 162, In the last cited case the lease contained a covenant to deliver up in good order "all future erections and additions" to or upon the premises. The court held trade fixtures not included. So also in *Liebe* v. *Nicolai,* 30 Ore. 364, 48 Pac. 172.

In the late case of *Lindsay Bros.* v. *Curtis Pub. Co.,* 236 Pa. St. 229, 84 Atl. 783, the court held that a covenant in a lease that "alterations, improvements and additions" made by the lessee at his own expense on the premises shall at the option of the lessor, remain on the premises and become the property of the lessor, did not cover electric power and lighting appliances installed by the tenant for the more convenient prosecution of its printing business. The court said that "The same sound policy of the law which favors a tenant in the matter of the removal of trade fixtures requires that in the construction of an agreement containing words whose meaning is doubtful the construction of the words most favorable to the tenant shall prevail. Nothing short of the clearest expression of an agreement by the parties to that effect can justify the extension of the grasp of the landlord so as to cover chattels, or personal property, brought upon the premises by the tenant, in pursuance of the business for which the premises were leased." Ten months later the Circuit Court of Appeals for the Third Circuit, in a Pennsylvania case, held in *Reber* v. *Conway,* 203 Fed. 12, that a covenant in a lease that "all improvements or additions made by the lessee shall not be detached from the property, but shall remain for the benefit of the lessor" prevented a lessee

from removing certain machines conceded by the court otherwise to be removable trade fixtures. The ground of the decision seems to be the meaning of the word "detached" considered in view of the fact that the lessee had rented a building arranged for a stable for the purpose of running an ice cream manufactory and had altered the building to make it available for that purpose.

In *Re Howard Laundry Co.*, 203 Fed. 445, the Circuit Court of Appeals for the Second Circuit held that a clause in a lease providing that "all additions and improvements which may be made by either party to or upon said premises shall be the property of the landlord" did not cover trade fixtures in the form of machinery otherwise of a removable character. The court said: "The presumption is that trade fixtures belong to the tenant and if it be the intention of the parties that they shall become the property of the landlord at the expiration of the lease, that purpose should be stated in language so clear and explicit that there can be no doubt as to its meaning." Surely the language of the lease in *Reber* v. *Conway, supra,* was not of that clear and explicit character. It is believed that the court in the last mentioned case placed a construction upon the word "detached" and the language of the covenant not warranted by the generally considered prevailing doctrine.

R. W. A.

INTERSTATE AND INTRASTATE SHIPMENTS.—The difficulty which sometimes arises in determining whether a certain shipment is interstate or intrastate is well illustrated by a recent case in the United States Supreme Court. *Texas & New Orleans Railroad Company* v. *Sabine Tram Co.*, 33 Sup. Ct. 229. The Sabine Tram Company, plaintiff below, was engaged in the manufacture of lumber at Ruliff, Texas, an inland town. The W. A. Powell Company, of New Orleans, which was engaged in buying lumber for export, bought a large amount of lumber from the Sabine Tram Company, the contract providing that the lumber should be delivered f. o. b. cars at Sabine, Texas, a port town, during September. The Sabine Company billed the lumber "Sabine Tram Co., Sabine, Texas, Notify W. A. Powell Co." The bills of lading were sent through a bank to the Powell Company, who paid the drafts attached and sent the bills to their agent at Sabine. On the arrival of the lumber at Sabine station, the agent of the Powell Company took charge of the cars and had them hauled a quarter of a mile past the station to the docks where the lumber was unloaded within reach of ship's tackle. As the ships which the Powell Co. had chartered came in, the lumber was loaded and exported. The lumber was bought by the Powell Company for export, but not to fill any particular orders. The Sabine Company had no connection with the further carriage of the lumber after it reached Sabine station, the further carriage being done solely at the instance of the Powell Co. For the carriage from Ruliff to Sabine station, defendant railroad company charged the interstate rate of 15 cents per hundred pounds on the ground that this carriage was part of a foreign shipment. Plaintiff brought this action to recover the difference between that rate and the rate of 6½ cents per hundred, the rate prescribed by the Texas Railroad Commission for intrastate ship-